

**THE GOVERNMENT OF  
THE HONG KONG SPECIAL ADMINISTRATIVE REGION**

**Information Services Department**

**INVITATION TO QUOTATION FOR SERVICES  
STRATEGIC ADVICE ON EXTERNAL COMMUNICATION**

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**QUOTATION INVITATION**

This quotation (Ref. No. ISD/OPRS/22/19) issued by the Information Services Department of the Government of the Hong Kong Special Administrative Region of the People's Republic of China contains the standard terms and conditions that are applicable by express incorporation or reference to invitations to quotation for the provision of services issued by the Information Services Department (hereafter called ISD) on behalf of the Government. The ISD may issue addenda to these terms and conditions whenever necessary.

Service Providers who respond to any such invitation to which these terms and conditions are applicable are required to confirm compliance with these terms and conditions, and those issued under any addenda, in addition to the other terms and conditions of that invitation.

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## **PART I INTERPRETATION**

1. In the documents issued by the Government in connection with this Invitation to Quotation (including these Standard Terms and Conditions) and the Contract that is made pursuant to this Invitation to Quotation), unless otherwise defined or the context otherwise requires the following expressions shall bear the same meanings as set out below:

“Annex”	means an annex attached to the Quotation Form
“Companies Registry”	means the Companies Registry of the Government.
“Contract”	means the agreement made between the Government and the Contractor pursuant to the Quotation Document, and reference to the terms thereof shall include the terms set out in the Quotation Document, completed, modified or expanded as necessary or appropriate to include the terms accepted by the Government and the Contractor.
“Contract Period”	means, subject to early termination or extension provided for in the Contract, the period from the date on which the Contract is constituted in accordance with Clause 23.1 of the Terms of Quotation to the date on which the Contractor has fully discharged all its obligations under the Contract (both dates inclusive).
“Contract Price”	means the amount set out in Annex B (Price Proposal), which is payable by the Government to the Contractor under the Contract for the full and proper performance by the Contractor of its obligations under the Contract.

“Contractor”		means the Service Provider whose Quotation is accepted by the Government.
“Force Event”	Majeure	<p>means:</p> <p>(a) any supervening outbreak of war affecting Hong Kong and/or any other parts of the PRC, hostilities (whether war be declared or not), invasion, acts of foreign enemies, rebellion, revolution, military or usurped power, overthrow (whether by external or internal means) of the Government and/or the government of the PRC, civil war, riot, civil disturbances, fire if not caused or contributed to by the Contractor, its related persons or any employee or agent or ex-employee or ex-agent thereof, civil commotion and acts of God;</p> <p>(b) any supervening catastrophic event which is similar to the foregoing if not caused or contributed to by the Contractor, its related persons or any employee or agent or ex-employee or ex-agent thereof; or</p> <p>(c) any supervening epidemic outbreak in Hong Kong; and which, in any case of (a), (b) and (c) above, prevents the performance of the duties and obligations of any party hereunder.</p>
“general holiday” or “public holiday”		means every Sunday and any other day which is a general holiday by virtue of the General Holidays Ordinance (Chapter 149 of the Laws of Hong Kong).

“Good Practice”	Industry	means the standards, practices, methods and procedures conforming to law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
“Government”		means the Government of the Hong Kong Special Administrative Region of the People’s Republic of China.
“Government Representative”		means an officer of the Information Services Department authorized for the purpose of the Contract.
“Hong Kong”		means the Hong Kong Special Administrative Region of the People’s Republic of China
“Intellectual Property Rights”		means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs, processes, and other intellectual property rights whether now known or created in future, in each case whether registered or unregistered, and include applications for the grant of any such rights.

“Invitation to Quotation”

means this invitation to quotation for the provision of the Services to the Government on the terms and conditions set out in the Quotation Document.

“Materials”

means any and all deliverables, works and materials in relation to the Services (whether individually or collectively or jointly with the Government) including without limitation, any reports, summaries, scripts, rundowns, models, questionnaires, analyses, comments, papers, documents, records, plans, drawings, formula, tables, charts, expression of data and information, software, photographs, video clips, videos, audio recordings, promotional and publicity materials and other documents, things and materials collected, supplied, compiled, developed, written, prepared, produced, made, used or created by the Contractor, its employees, agents or sub-contractors in relation to the Services or in the course of carrying out the Services or for the purpose of the Contract, which are recorded or stored by whatever means in whatever form or media and the drafts and uncompleted versions of any of the above.

“Original Quotation Closing Date”		means the latest date by which Quotations must be lodged as stipulated in Paragraph 2.10 of the Terms of Quotation, regardless of whether the date has been extended subsequently.
“PRC”		means the People’s Republic of China.
“Services”		means the services to be provided by the Contractor to the Government as Specified in the Service Specification.
“Services Specification”		means the specification referred to in Part IV (Service Specification) of the Quotation Document.
“Quotation”		means an offer to provide the Services as submitted by a Service Provider in response to the Quotation Document.
“Quotation Acceptance”		has the meaning given to it in Paragraph 23 of the Terms of Quotation.
“Quotation Time”	Closing	means the latest date and time before which Quotation shall be lodged as specified in Clause 2.10 of the Terms of Quotation and which may be extended in accordance with Clause 2.11 of the Terms of Quotation.

“Quotation Document”		means the documents issued by the Government for the purposes of the Invitation to Quotations, and has the meaning given to such term in Clause 1.10 of the Terms of Quotation.
“Service Provider”		means a person (including its sub-contractor where the context permits or requires) submitting a Quotation in response to the Quotation Document.
“Quotation Period”	Validity	means the period of time as described in Clause 4.1 of the Terms of Quotation.
“working day”		means Monday to Friday other than a public holiday or a day on which Tropical Cyclone Warning Signal no. 8 or above is hoisted or a Black Rainstorm Warning Signal is in force for any duration between 0900 and 1200 hours in Hong Kong.

2. The following rules of interpretation shall apply:

- (a) references to statutes or statutory provisions shall be construed as references to those statutes or statutory provisions as replaced, amended, modified or re-enacted from time to time; and shall include all subordinate legislation made under those statutes;
- (b) words importing the singular shall include the plural and vice versa; words importing a gender shall include all other genders; references to any person shall include any individual, firm, body corporate or unincorporate (wherever established or incorporated);
- (c) headings are inserted for ease of reference only and shall not affect the construction of the Quotation Document or the

Contract;

- (d) references to a document shall:
  - (i) include all schedules, appendices, annexures and other materials attached to such document; and
  - (ii) mean the same as from time to time amended or supplemented in accordance with the terms of the Quotation Document or the Contract;
- (e) references to “Service Provider” or “Contractor” shall include its permitted assignees, successors, or any persons deriving title under them;
- (f) references to “Government” shall include its assignees, successors-in-title and persons deriving title under them, regardless of whether or not any of these persons are mentioned separately in the relevant provisions;
- (g) references to a “Paragraph” in the Terms of Quotation are to a paragraph in the Terms of Quotation; references to a Clause, Sub-clause, Section or Paragraph in or a Schedule, Annex or any other attachment to a document are to a clause, sub-clause, section or paragraph in or a schedule, annex or attachment to that document;
- (h) references to “law” and “regulation” shall include any constitutional provisions, treaties, conventions, ordinances, subsidiary legislation, orders, rules and regulations having the force of law and rules of civil and common law and equity;
- (i) any word or expression to which a specific meaning has been attached in any part of the Quotation Document shall bear such meaning whenever it appears in the same and other parts of the Quotation Document;
- (j) a time of a day shall be construed as a reference to Hong Kong time;
- (k) references to “normal business hours” mean 0900 to 1800 hours;
- (l) references to a day mean a calendar day;
- (m) references to a month or a monthly period mean a calendar

month;

- (n) any negative obligation imposed on any party shall be construed as if it were also an obligation not to permit or suffer the act or thing in question, and any positive obligation imposed on any party shall be construed as if it were also an obligation to procure that the act or thing in question be done;
  - (o) any act, default, neglect or omission of any employee, licensee, agent or sub-contractor of the Contractor shall be deemed to be the act, default, neglect or omission of the Contractor;
  - (p) words importing the whole shall be treated as including a reference to any part of the whole;
  - (q) the expressions “include” and “including” shall be construed without limitation to the words following;
  - (r) words and expressions extend to their grammatical variations and cognate expressions where those words and expressions are defined in the Quotation Document or by reference to any other definition;
  - (s) references to “writing” include typewriting, printing, lithography, photography, facsimile and the printed out version of a communication by electronic mail and other modes of representing and reproducing words in a legible form; and
  - (t) where a general obligation in the Quotation Document or the Contract is followed by more specific obligations, the general obligation shall not be construed restrictively by reference to the specific obligations or deemed to be fully performed by reason only that the specific obligations have been performed.
3. Nothing in the Contract shall be taken to restrict, derogate from or otherwise interfere with any power or duty, or the exercise or performance of any power or duty conferred or imposed by or under any law upon the Government or any person in the service of the Government.
4. All rights and powers of the Government under the Contract may be exercised by the Government Representative. If any provision of the Contract provides for a determination of any matter by the Government or the Government Representative, the determination

made by the Government or the Government Representative (as the case may be) shall, in the absence of manifest error, be final and conclusive.

5. Unless otherwise provided for in the Quotation Document, all quotations and payments shall be made in Hong Kong Dollars, or US Dollars.

## **PART II TERMS OF QUOTATION**

### **1. Invitation to Quotation**

- 1.1 Quotations are invited for the provision of all of the Services subject to and in accordance with the Quotation Document.
- 1.2 A Service Provider should read the Quotation Document carefully prior to submitting a Quotation and ensure that it understands all requirements of the Quotation Document.
- 1.3 A Service Provider should obtain such independent advice from its own advisers as it considers appropriate.
- 1.4 A Service Provider should check the numbers of pages of the Quotation Document. If it finds any missing or indistinct pages, it should inform the Government Representative immediately so that the same can be rectified.
- 1.5 A Service Provider will be regarded to be thoroughly conversant with all aspects of the Quotation Document (including the Contract) and in general to have obtained all necessary information of any circumstances which may influence or affect its Quotation or its performance of the Contract. The Government does not assume any liability in respect of any errors or mistakes made by a Service Provider or any neglect or failure of the Service Provider to obtain any information or clarification relating to the provision of the Services to the Government in accordance with the Contract.
- 1.6 No error, mistake, neglect or failure by a Service Provider shall affect any provision of the Quotation Document (including the Contract) or relieve the Service Provider from any of its obligations or liabilities under the Quotation Document (including the Contract). For the avoidance of doubt, a successful Service Provider shall not be entitled to any additional payment, compensation or allowance by reason of any such error, mistake, neglect or failure. If a Service Provider is awarded the Contract, it shall not be excused from any liability under the Contract as a consequence of any misinterpretation by it of any matter or fact relating to the Quotation Document or the Contract.

- 1.7 Information, statistics and forecasts set out in the Quotation Document are provided for a Service Provider's reference only. The Government does not warrant or represent that the information, statistics and forecasts are complete, true or accurate. The Government does not bind itself to adhere to such information, statistics and forecasts.
- 1.8 Without prejudice to Paragraph 1.7, the estimated requirement of the Services specified in Service Specifications (if any) is/are estimate(s) of the Services that may be required by the Government. They are given for a Service Provider's reference only and are not figures to which the Government binds itself to adhere. The Government's actual requirements may vary depending on the actual need of the Procuring Department and the successful Service Provider must accept any increase or decrease of the stated estimates.
- 1.9 By submitting a Quotation, a Service Provider will be regarded to have agreed to all terms and conditions set out in the Quotation Document.
- 1.10 The Quotation Document consists of the following:
- (a) Part I (Interpretation);
  - (b) Part II (Terms of Quotation);
  - (c) Part III (Conditions of Contract);
  - (d) Part IV (Service Specification);
  - (e) Part V (Offer to be Bound);
  - (f) Annex A (Technical Proposal);
  - (g) Annex B (Price Proposal);
  - (h) Annex C (Evaluation of Technical Proposal and Price Proposal);
  - (i) Annex D (Information on the Service Provider);
  - (j) Annex E (Information Schedule); and
  - (k) Annex F (Registration Form for Attending Quotation Briefing).

## **2. Quotation Preparation and Submission**

- 2.1 Save in accordance with the terms of the Quotation Document, a Service Provider must not alter any provision of the Quotation Document.
- 2.2 A Quotation must be completed in either English or Chinese and in accordance with other requirements of the Quotation Document. The Government will not consider a Quotation that is completed in any other language.
- 2.3 A Service Provider shall submit, in the following manner, its completed Quotation together with all information and documents required under the Quotation Document or relevant to its Quotation in accordance with the terms of the Quotation Document. A Quotation not so submitted (for example, a Quotation submitted by e-mail or facsimile) will not be considered.
- 2.4 A Quotation shall be completed in ink or typescript and submitted with all necessary information including documentary evidence which is necessary for quotation evaluation.
- 2.5 A Quotation submitted by a Service Provider shall comprise a technical proposal (“Technical Proposal”) in one envelope and a price proposal (“Price Proposal”) in another envelope:
  - (a) the Technical Proposal shall comprise the following:
    - (i) where the Service Provider proposes to sub-contract any of the Services, details of the proposed sub-contractor;
    - (ii) the technical information as required at Annex A;
    - (iii) Part V (Offer to be Bound) duly completed and signed by the Service Provider; and
    - (iv) all other information and documents set out at Annex D, E and F as well as required by the Quotation Document.
  - (b) the Price Proposal shall comprise Annex B (Price

Proposal) duly completed and signed by the Service Provider.

2.6 Three (3) sets of the Technical Proposal and three (3) sets of Price Proposal should be submitted.

2.7 The Government may not consider a Quotation if:

- (a) false, inaccurate or incorrect information is given in the Quotation;
- (b) complete information (including descriptive literature, catalogues and any other document required under any provision of the Quotation Document) is not given with the Quotation; and
- (c) any particulars or data requested for in the Quotation Document is not furnished in full in the Quotation.

2.8 When completing the Quotation Document (including the Offer to be Bound section), a Service Provider shall ensure that the name of the Service Provider is the same as the name shown in:

- (a) if the Service Provider is a company incorporated in Hong Kong:
  - (i) the Certificate of Incorporation of the Service Provider; or
  - (ii) if there is a change of name of the Service Provider since the date of its Certificate of Incorporation, the latest Certificate of Change of Name of the Service Provider;
- (b) if the Service Provider is a sole proprietorship or a partnership, the latest business registration certificate of the Service Provider; or
- (c) if the Service Provider is formed, established or incorporated outside Hong Kong, a document equivalent to Paragraph 2.8 (a)(i), (a)(ii) or (b) above (as the case may be) issued by a governmental or competent authority of the place where the Service Provider is formed, established or incorporated.

## 2.9 Execution and Submission of Quotations

- (a) Part V “Offer to be Bound” shall be duly signed by:
  - (i) if the Service Provider is a sole proprietorship, the Service Provider;
  - (ii) if the Service Provider is a partnership, a partner of the Service Provider; or
  - (iii) if the Service Provider is a body corporate, one or more persons who are duly authorised by the Service Provider to sign and submit the Quotation for and on behalf of the Service Provider.
- (b) a Quotation will not be further considered if Part V “Offer to be Bound” is not completed and signed in the manner described in Paragraph 2.9(a) above or submitted with the Quotation before the Quotation Closing Time.

2.10 The Quotation comprising both the Technical Proposal and the Price Proposal as arranged under Clause 2.5 must be enclosed in a sealed envelope that is clearly marked “Quotation Ref: ISD/OPRS/22/19 Provision of Services for Strategic Advice on External Communication” without bearing any references to the identity of the Service Provider, and deposit in the ISD Quotation Box situated at the following address by hand before the closing time for the quotation, i.e. 12 noon on August 27, 2019:

Supplies Section  
Information Services Department  
Room 1238, 12/F, North Point Government Offices  
333 Java Road, North Point, Hong Kong

**Late Quotations and Quotations submitted by other methods (e.g. by email/fax) will not be considered.** The Government will not be responsible for any mislaid Quotations or those submitted by methods other than as indicated above.

2.11 If a Black Rainstorm Warning Signal or Tropical Cyclone Warning Signal No. 8 or above is in force for any duration between 9:00 a.m. (Hong Kong time) and 12:00 noon (Hong

Kong time) on the date specified in Clause 2.10 above, the Quotation Closing Time will be extended to 12:00 noon (Hong Kong time) on the next working day after the Black Rainstorm Warning Signal or Tropical Cyclone Warning Signal No. 8 or above is cancelled.

2.12 All documents to be submitted by a Service Provider shall either be originals or certified true copies of the documents. If a Service Provider fails to comply with this requirement, its Quotation may not be further considered.

2.13 Information to be submitted

(a) A Service Provider shall submit the following information/supporting documents in its quotation before the Quotation Closing Time:

- (i) Offer to be Bound in Part V duly signed by the Service Provider;
- (ii) the information required in Annex A – Technical Proposal; and
- (iii) the Total Service Fee required in Annex B – Price Proposal.

Otherwise, the Service Provider's Quotation will not be considered further.

(b) In addition to Paragraph 2.13(a) above, the Service Provider is required to provide all other information/supporting documents requested in this Quotation Document or relevant to its quotation, including without limitation the following:

- (i) the information required in Annex D – Information on the Service Provider; and
- (ii) a copy of a relevant document showing that the authorised person(s) who sign(s) the “Offer to be Bound” has/have the authority to sign for and on behalf of the Service Provider.

The Service Provider should provide all the above items at the same time when it submits its quotation. If any is found

missing in a quotation, the Government may, but is not obliged to, make a request for the missing item. If any of the above information is still not provided by the time specified by the Government, **the Service Provider's Quotation will not be considered further.**

(c) In addition to Paragraph 2.13(b) above, the Service Provider should provide the items below at the same time when it submits its quotation:

- (i) a copy of valid Business Registration Certificate or other valid business document of the Service Provider issued by a competent authority; and
- (ii) a copy of the Certificate of Incorporation or the Certificate of Change of Name (if any) or equivalent document in the Service Provider's trading name as shown in the Business Registration Certificate or other valid business documents issued by a governmental or competent authority.

If any is found missing in a quotation, the Government may, but is not obliged to, make a request for the missing item. If any of the above information is still not provided by the time specified by the Government, **the Service Provider's Quotation may not be considered further.**

(d) Nothing in this Clause shall limit the Government's absolute right to request any other information/supporting documents in connection with or arising out of this Invitation to Quotation.

### **3. Basis of Acceptance**

3.1 The Government will assess the Quotations received based on the assessment criteria set out in Annex C. The acceptance of quotation is on an overall basis after evaluation of both the Technical Proposal and the Price Proposal of each quotation.

3.2 Before submitting their Quotations, Service Providers are advised to note the following qualitative assessment to be adopted for quotation evaluation:

(a) Stage 1 – Completeness Check

A completeness check will be conducted to confirm if a quotation has been submitted in accordance with the procedural requirements stipulated in the Quotation Document. If a Service Provider fails to submit any of the information/documents stipulated in Paragraph 2.13(a) of the Terms of Quotation before the Quotation Closing Time, its quotation will not be considered further.

(b) Stage 2 – Compliance with essential requirements

Quotations which passed Stage I will be checked for its compliance with the essential requirements as detailed in the Quotation Document. Any Quotation failing to meet any of the essential requirements will not be considered further.

(c) Stage 3 – Technical Assessment

The quotations which passed both Stage I and Stage II will be further considered in Stage III. An Assessment Panel will be formed to evaluate the quotations according to the criteria as set out in Annex C. An overall passing mark of 18.75 is set for Image Assessment and PR Suggestions, which is 25% of 75 marks, the total maximum mark excluding the marks reserved for innovative suggestions and experience in Government sectors. Quotations that fail to attain the passing mark of 18.75 for Image Assessment and PR Suggestions will not be considered further. A quotation which has passed Stage III assessment shall be considered as a conforming quotation.

(d) STAGE 4 – Price Assessment

The price proposals of those conforming quotations which completed Stages I, II and III will be further evaluated. A maximum Weighted Price Score of 30 will be allocated to the conforming quotation with the lowest Total Service Fee, while the Weighted Price Score for other conforming quotations will be calculated by the following formula:

$$\text{Weighted Price Score} = \frac{\text{The lowest Total Service Fee among the quotations being assessed in STAGE IV – PRICE ASSESSMENT}}{\text{Total Service Fee of the Quotation being assessed}} \times 30$$

(d) STAGE 5 – Calculation of Combines Score

The Combined Score of a conforming Quotation will be calculated in accordance with the following formula:

Combined Score = Weighted Technical Score + Weighted Price Score

Normally, the quotation with the highest Combined Score will be recommended for acceptance, subject to the requirement that the Government is satisfied that the recommended Service Provider is fully (including technically, commercially and financially) capable of undertaking the contract, and that the recommended quotation is the most advantageous quotation to the Government in accordance with the quotation provisions.

#### **4. Quotation to Remain Open**

- 4.1 Quotations shall remain valid and open for acceptance on these terms by the Government for not less than ninety (90) days after the Quotation Closing Time (“Quotation Validity Period”).
- 4.2 If, before expiry of the Quotation Validity Period, a Service Provider withdraws its offer, the Government will take due notice of the Service Provider’s action and this may well prejudice its future standing as a Government contractor.

#### **5. Prices**

- 5.1 Unless otherwise provided for in the Quotation Document, a Service Provider shall quote all the prices requested for in the Quotation Document in Hong Kong Dollars, or US Dollars. Such prices shall be net prices allowing for all trade and cash discounts. The prices shall cover all expenses incidental to the due and proper performance of the Contract by the Contractor.
- 5.2 Prices quoted by a Service Provider shall only be shown in Annex B (Price Proposal). Only the Total Service Fee quoted in

Annex B will be taken into account for assessment of the Price Proposal.

- 5.3 A Service Provider must quote fixed prices.
- 5.4 A Service Provider should make sure that all prices quoted in its Quotation are accurate before it submits the Quotation. The Service Provider shall be bound by the Quotation prices quoted in its Quotation if the Quotation is accepted by the Government. Under no circumstances will the Government be obliged to accept any request for price adjustment on any ground (including any mistake made in prices quoted).
- 5.5 Without prejudice to the generality of the Terms of Quotation, the Government may require a Service Provider who in the opinion of the Government has submitted an unreasonably low price to justify and demonstrate that such a Service Provider is capable of carrying out and completing the Contract. The Government may reject the Quotation if the Service Provider fails to so justify and demonstrate to the Government's satisfaction.

## **6. Company/Business Organization Status**

- 6.1 A Service Provider shall provide the following details relating to itself:
  - (a) name and address of the company/business organization;
  - (b) length of business experience;
  - (c) particulars of company (e.g. year of establishment, ownership, number of workers employed, liability etc);
  - (d) experience in rendering similar services in related field(s) (with name(s) of company/government department, locations and dates)
- 6.2 If a Service Provider is incorporated, formed or established outside Hong Kong, a legal opinion in form and substance satisfactory to the Government and issued by a lawyer duly qualified to practise the laws of the place of incorporation,

formation or establishment (as the case may be) of the Service Provider and acceptable to the Government shall be provided upon request by the Government on the following issues and any other issues as may be required by the Government:

- (a) the Service Provider is duly incorporated, formed or established and validly existing under the laws of the place of the Service Provider's incorporation, formation or establishment and that the Service Provider has full power, capacity and authority to carry on the business as it is now conducting and to provide the Services to the Government on the terms and conditions of the proposed Contract;
- (b) the Service Provider has the full power, authority and legal capacity to:
  - (i) execute and submit its Quotation and to incur the liabilities and perform the obligations under the Quotation Document; and
  - (ii) enter into and execute the Contract and to incur the liabilities and perform the obligations thereunder;
- (c) the proposed Contract with the Government will, upon its formation pursuant to Clause 23.1 of the Terms of Quotation, constitute the legal, valid and binding obligations of the Service Provider in the place of its incorporation, formation or establishment and is enforceable against the Service Provider in accordance with its terms;
- (d) the execution, delivery and performance of its Quotation and the proposed mode of execution, delivery and performance of the Contract (if awarded to the Service Provider) have been duly authorized by all necessary corporate action of the Service Provider, and does not violate any provision of any applicable law, regulation or decree of the Service Provider's place of incorporation, formation or establishment, or the Memorandum and Articles of Association or similar constitutional documents of the Service Provider;

- (e) no authorisations, consents, approvals are required from any governmental authorities or agencies or other official bodies in the place of incorporation, formation or establishment in connection with the execution and delivery of the Service Provider's Quotation, or the performance by the Service Provider of its obligations under the Quotation Document and the Contract;
- (f) the Service Provider's Quotation and the Contract (if awarded to the Service Provider) need not be registered or filed in the place of incorporation, formation or establishment in order to secure their validity and/or priority;
- (g) there is no restriction under the laws of the place of the Service Provider's incorporation, formation or establishment affecting the Service Provider's obligations under the Quotation Document and the Contract;
- (h) the choice of the laws of Hong Kong to govern the Quotation Document and the Contract is a valid choice of laws and would be recognised and given effect to by the courts of the place of incorporation, formation or establishment of the Service Provider; and
- (i) it is not necessary under the laws of the place of incorporation, formation or establishment of the Service Provider that the Government be licensed, qualified or otherwise registered in such place of incorporation, formation or establishment in order to enable it to enforce its rights under the Quotation Document and the Contract.

6.3 The Government may require a Service Provider to provide, at its own expense, additional legal opinion satisfactory to the Government in all respects issued by a lawyer duly qualified to practise the laws of the place of incorporation, formation or establishment of the Service Provider and acceptable to the Government on any other matters arising from its Quotation.

6.4 If a Service Provider proposes to engage any sub-contractor to perform the Contract, subject to the other provisions in the Quotation Document relating to such engagement, the Service

Provider shall submit with its Quotation, information and documents relating to each of such proposed sub-contractor on the matters referred to in Paragraph 6.1, and if the proposed sub-contractor is incorporated outside Hong Kong, the legal opinion referred to in Paragraphs 6.2 and 6.3 above.

## **7. Cancellation of Quotation**

Without prejudice to the Government's right to cancel the quotation at its absolute discretion or for public interest reasons, where there are changes of requirement after the Quotation Closing Time for operational or whatever reasons, the Government is not bound to accept any conforming quotation and reserves the right to cancel the quotation exercise.

## **8. Counter-Proposals**

- 8.1 A Service Provider must not submit any proposal that has the effect of varying or modifying any essential requirements specified in the Quotation Document.
- 8.2 If a Service Provider fails to comply with Paragraph 8.1, its Quotation will be disqualified and will not be further considered by the Government.
- 8.3 Subject to Paragraph 8.1, if a Service Provider still wishes to submit a counter-proposal ("Counter-Proposal"), the Counter-Proposal must be submitted in the following manner:
  - (a) the Counter-Proposal shall be attached to the Offer to be Bound;
  - (b) the original provision which the Counter-Proposal relates to should be fully recited before the proposed alteration or deletion;
  - (c) the proposed alteration to the original provision should be underlined and should bear the corresponding clause number of the original provision unless it is an addition;
  - (d) if it is an addition, the additional provision should be

underlined;

- (e) words to be deleted should be crossed out by a single line only; and
- (f) an explanation should be given below the alteration or deletion and put in square brackets “[ ]”.

8.4 Any Counter-Proposal that is not submitted in accordance with Paragraph 8.3 will not be considered by the Government and will not be regarded to form part of the Quotation submitted by a Service Provider. In such event, the Service Provider shall be deemed to have agreed to the original term to which the Counter-Proposal relates and the Government will continue to consider the Service Provider’s Quotation on this basis.

8.5 Notwithstanding and without prejudice to the aforesaid, the Government may negotiate with the Service Provider any Counter-Proposal but is not obliged to do so. The Government may at its absolute discretion reject any Counter-Proposal. If negotiation is conducted but fails, the Government may reject or exclude the Counter-Proposal and assess the Quotation as it is without the Counter-Proposal.

## **9. Authenticity of Documents Submitted**

All documents submitted by a Service Provider to the Government in relation to its Quotation shall be original documents or certified true copies of the original documents. If a Service Provider fails to comply with this requirement or fails to provide such verification as the Government may require to prove the authenticity of a document submitted to the Government, the Government may not further consider the Quotation.

## **10. Personal Data Provided**

10.1 All personal data provided in a Quotation will be used by the Government for the purposes of the Quotation Document and all other purposes arising from or incidental to it (including for the purposes of quotation evaluation, the award of the Contract and resolution of any dispute arising from the Quotation Document).

- 10.2 By submitting a Quotation, a Service Provider is regarded to have agreed to, and to have obtained from each individual whose personal data is provided in the Quotation, his consent for the disclosure, use and further disclosure by the Government of the personal data for the purposes set out in Clause 10.1.
- 10.3 An individual to whom personal data belongs and a person authorized by him in writing has the right of access and correction with respect to the individual's personal data as provided for in sections 18 and 22 and Principle 6 of Schedule 1 to the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong). The right of access includes the right to obtain a copy of the individual's personal data provided in the Quotation.
- 10.4 Enquiries concerning the personal data collected by means of the Quotation Document, including the making of access and corrections, should be addressed to the Personal Data Controlling Officer of the Information Services Department.

## **11. Warranty against Collusion**

- 11.1 By submitting a Quotation, a Service Provider is regarded to have represented and warranted to the Government that in relation to the Quotation Document:
- (a) save with the prior written consent of the Government, it has not communicated and will not communicate to any person other than the Government the amount of any price submitted in its Quotation;
  - (b) it has not fixed and will not fix the amount of any price submitted in its Quotation by arrangement with any person;
  - (c) it has not made and will not make any arrangement with any person as to whether it or that other person will or will not submit a Quotation; and
  - (d) it has not otherwise colluded and will not otherwise collude with any person in any manner whatsoever in the quotation process.

- 11.2 In the event that a Service Provider is in breach of any of the representations and/or warranties in Clause 11.1, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:
- (a) reject the Service Provider's Quotation;
  - (b) if the Government has accepted the Quotation, withdraw its acceptance of the Quotation; and
  - (c) if the Government has entered into the Contract with the Service Provider, terminate the Contract.
- 11.3 By submitting a Quotation, a Service Provider is regarded to have undertaken to indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations and/or warranties in Clause 11.1.
- 11.4 A breach by a Service Provider of any of the representations and/or warranties in Clause 11.1 may prejudice its future standing as a Government contractor or service provider.
- 11.5 Clause 11.1 shall have no application to a Service Provider's communications in strict confidence with its own insurers or brokers to obtain an insurance quotation for computation of the prices quoted in its Quotation, or with its professional advisers, consultants or sub-contractors to solicit their assistance in preparation of its Quotation.
- 11.6 The rights of the Government under Clauses 11.2 to 11.4 are in addition to and without prejudice to any other rights or remedies available to it against the Service Provider.

## **12. Warning against Bribery**

- 12.1 The offer of an advantage to any Government officer with a view to influencing the award of the Contract is an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong). Any such offence committed by a Service Provider or any of its officers (including directors), employees or agents will render its Quotation null and void.

12.2 The successful Service Provider shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors who are connected with the provision of the Services that the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) is not permitted. The successful Service Provider shall also caution its officers (including directors), employees and agents and sub-contractors against soliciting or accepting any excessive hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors once selected.

### **13. Service Provider's Commitment**

13.1 All Quotations, information and responses from a Service Provider must be submitted in writing. Each of them is the representation of the Service Provider and will, if accepted by the Government, be incorporated into and made part of the Contract in such manner as the Government considers appropriate.

13.2 The Government reserves the right not to consider a Quotation that directly or indirectly attempts to preclude or limit the effect of the requirement stated in Clause 13.1 above.

### **14. New Information**

A Service Provider should inform the Government in writing immediately of any factor which might affect its ability to meet any requirements of the Quotation Document. The Government reserves the right not to consider a Service Provider's Quotation further if the Service Provider's continued ability to meet such requirements is in doubt.

### **15. Contractor's Performance Monitoring**

If a Service Provider is awarded the Contract, its subsequent performance will be monitored and may be taken into account when its

future offers for other quotation/tender exercises are evaluated.

## **16. Cost of Quotation**

A Service Provider shall submit its Quotation at its own cost and expense. The Government shall not be liable for any costs and expenses whatsoever incurred by a Service Provider in connection with the preparation or submission of its Quotation, including all costs and expenses relating to communication or negotiations with or providing presentation or demonstration to the Government.

## **17. Request for Information**

17.1 In the event that the Government determines that:

- (a) clarification in relation to any Quotation is necessary; or
- (b) a document or a piece of information, other than the document or information set out in Clause 17.2, is missing from any Quotation, it may, but is not obliged to, request the Service Provider concerned to make the necessary clarification, or submit the required document or information. Each Service Provider shall thereafter within five (5) working days or such other period as specified in the request submit such clarification, information or document in the form required by the Government. A quotation will not be considered further if complete information or document is not provided as required by the deadline as specified in the request, or in the case of clarification, such clarification is not provided by such deadline or is not acceptable to the Government. As an alternative to seeking clarification or further information or document, the Government may not consider the Quotation further or may proceed to evaluate the Quotation on an “as is” basis.

17.2 The document and information not covered by Clause 17.1 are:

- (a) price information or quotes required in the Quotation Document;
- (b) a signed Part V (Offer to be Bound); and

- (c) any other document or information in respect of which it is specified in the Quotation Document that a failure to provide to the Government in a Quotation at the time of submission of the Quotation or by the Quotation Closing Time will result in the Quotation not being considered.

17.3 Service Providers should also note that the Government will not consider any clarification or information submitted by a Service Provider after the Quotation Closing Time irrespective of whether or not the clarification or information is submitted at the invitation of the Government if the Government considers that such clarification or information would alter the Service Provider's Quotation in substance or give the Service Provider an advantage over the other Service Providers.

## **18. Service Provider's Enquiries**

18.1 Any enquiries from the Service Provider concerning the Quotation Document up to the date of lodging its Quotation with the Government shall be in writing and shall be submitted to the Government as follows:

Ms Jacqueline Cheuk  
Principal Information Officer  
Information Services Department  
Room 1104C, North Point Government Offices  
333 Java Road  
Hong Kong  
Email: jacquelinecheuk@isd.gov.hk

18.2 After lodging a Quotation with the Government, the Service Provider shall not attempt to initiate any further contact, whether direct or indirect, with the Government on its Quotation or the Quotation Document. The Government shall have the sole right to initiate any such further contact and all such contacts and any replies of the Service Provider thereto shall be in writing or formally documented in writing.

18.3 Unless otherwise expressly stated by the Government in writing, a statement made by the Government (whether oral or written) in response to any enquiry made by a prospective Service Provider shall be for information only. No such statement shall constitute a representation or warranty by the Government of any nature whatsoever (whether express or implied), and no invitation is made

by the Government to any Service Provider or prospective Service Provider to rely on such statement. No such statement shall form part of the Quotation Document or alter, negate or constitute a waiver of any provision of the Quotation Document.

## **19. Quotation Briefing Session**

- 19.1 A quotation briefing session will be held on August 20, 2019. Prospective service providers who wish to submit a bid in this quotation are strongly recommended to attend this briefing session. Prospective service providers who would like to attend the briefing session should complete and return the registration form at Annex F.
- 19.2 Each prospective service provider may nominate not more than three (3) representatives for the briefing session.
- 19.3 The schedule of the quotation briefing session is subject to change at the sole discretion of the Government.

## **20. Communication with the Government**

- 20.1 All communications given or made by the Government or a Service Provider in relation to the Quotation Document shall be in writing and sent or delivered to the other party in the manner provided in Clause 20 of the Conditions of Contract, save that the Government may, by prior notice to a Service Provider, require the Service Provider to send or deliver a written communication by post or facsimile only.
- 20.2 All communications in relation to the Quotation Document shall be conducted directly between the Government and the Service Provider irrespective of the number of sub-contractors involved.

## **21. Negotiations**

- 21.1 The Government reserves the right to negotiate with any Service Provider the terms of the Service Provider's Quotation and conditions of the Contract.
- 21.2 Negotiations will normally be conducted only with the Service

Provider whose Quotation complies with all the essential requirements and is in the sole opinion of the Government the most advantageous to the Government. Where there is no Quotation (despite having complied with all the essential requirements) is so considered by the Government or where the most advantageous Quotation cannot be determined until after any Counter-Proposals have been resolved or withdrawn, the Government reserves the right to hold negotiations also with the other Service Providers.

## **22. Award of Contract**

- 22.1 Subject to the other provisions of the Quotation Document, the Government will normally award the Contract to the Service Provider which the Government has determined to be capable of fulfilling the terms of the Contract and whose Quotation conforms with all the essential requirements stipulated in the Quotation Document and has the lowest quotation price among all the Service Providers, where the Invitation to Quotation is not subject to a marking scheme on the technical and price aspects.
- 22.2 Each Service Provider acknowledges that the Government may elect at its sole option to accept all or any part of the Service Provider's Quotation.
- 22.3 The Government is not bound to accept the Quotation with the lowest price offer and reserves the right to accept all or any part of any Quotation at any time within the Quotation Validity Period.

## **23. Acceptance**

- 23.1 A Quotation shall not be regarded to have been accepted by the Government unless the Government issues to the successful Service Provider an acceptance in writing ("Quotation Acceptance") and sends it by either post or facsimile transmission to the successful Service Provider's address or facsimile number (as the case may be) specified in Annex D (Information on the Service Provider). A binding Contract between the Government and the successful Service Provider is only constituted:

- (a) if the Quotation Acceptance is sent by post, at the time of posting; or
  - (b) if the Quotation Acceptance is transmitted by facsimile, at the time when a transmission report is generated by the Government's facsimile machine, confirming that the Quotation Acceptance has been transmitted to the aforementioned facsimile number.
- 23.2 A duplicate hard copy of the Contract will subsequently be delivered to the successful Service Provider evidencing the earlier acceptance by post or facsimile transmission, as the case may be.
- 23.3 Service Providers who do not receive any notification within the Quotation Validity Period may assume that their Quotations have not been accepted.

## **24. Government Discretion**

- 24.1 Notwithstanding anything to the contrary in this Quotation Document, the Government reserves the right to disqualify a Service Provider on grounds including any one of the following:
- (a) a petition is presented or a proceeding is commenced which has not been withdrawn as at the Quotation Closing Time or an order is made or a resolution is passed for the winding up or bankruptcy of the Service Provider;
  - (b) the Service Provider has made or submitted a false, inaccurate or incomplete statement or representation or a forged document in the Quotation or in any subsequent submission by the Service Provider or communication between the Government and the Service Provider since submission of that Quotation;
  - (c) in the event of a claim alleging or the Government having grounds to believe that any thing(s), service(s) or material(s) to be supplied or recommended by the Service Provider in its Quotation infringe or will infringe any Intellectual Property Rights of any person;

- (d) the Service Provider has made significant or persistent breaches or deficiencies in performance of any substantive requirement or obligation under any Government or other contracts;
- (e) the Service Provider has been convicted by the final judgement in respect of serious crimes or other serious offences;
- (f) in the event of the professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the Service Provider;
- (g) any failure of the Service Provider to pay taxes to the Government; or
- (h) the Service Provider has made any restrictions or limitations which seek to limit or avoid the responsibility of the Service Provider in contract, tort or otherwise for failing to exercise the skill and care required by the Contract, or reasonably expected of the Service Provider/Contractor under the Contract in the Quotation or in any subsequent submission by the Service Provider or communication between the Government and the Service Provider since submission of the Quotation.

The grounds specified in Paragraphs 24.1(a) to 24.1(h) are separate and independent, and shall not be limited by reference to or inference from the other of them.

24.2 For the purposes of Paragraph 24.1, each Service Provider shall provide at the time of submission of its Quotation (and thereafter up to the time of award in relation to any event occurring between the time of submission and the time of award) all information at least in relation to itself that is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification, including but not limited to the following:

- (a) details of any petition or proceeding mentioned in Paragraph 24.1(a);
- (b) details of conviction of the Service Provider in Hong Kong or any overseas jurisdictions in respect of (i) serious

offences; and (ii) other offences involving bribery, false accounting, corruption, dishonesty or employment handed down any time during a period of five (5) years preceding the Quotation Closing Time and thereafter up to the time of award;

- (c) details of all infringement claims as mentioned in Paragraph 24.1(c); and
- (d) details of all breaches or performance deficiencies of the Service Provider or a related person as mentioned in Paragraph 24.1(d).

If none of the events as mentioned in Paragraphs 24.2(a) to 24.2(d) above has ever occurred within the applicable period as mentioned above, the Service Provider shall provide a statement to that effect by completing the relevant part of the Information Schedule at the time of submission of its Quotation. If found missing, the Government reserves the right to seek clarification pursuant to Paragraph 24.3 below.

24.3 In addition to the information mentioned in Paragraph 24.2, the Government reserves the right to request from a Service Provider and take into account all information about:

- (a) the Service Provider itself;
- (b) any of the directors or management staff of the Service Provider who conduct similar business as the Service Provider or whose businesses any of which is similar to the business of the Service Provider; and
- (c) any of the related persons of the Service Provider and of any directors and management staff of the related persons who conduct similar business as the Service Provider or whose businesses any of which is similar to the business of the Service Provider,

and such information is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification under Paragraph 24.1.

Such information relating to any of the aforesaid persons may include, without limitation, details of any conviction in respect of offences referred to in Paragraph 24.2(b) or details of any

breaches or performance deficiencies referred to in Paragraph 24.1(d), details of any serious crimes or serious offences referred to in Paragraph 24.1(e), of any professional misconduct, acts or omissions referred to in Paragraph 24.1(f) and of any failure to pay taxes to the Government referred to in Paragraph 24.1(g) above.

- 24.4 If the Service Provider fails to comply with the request made by the Government pursuant to Paragraph 24.3 above within such time as required by the Government or has otherwise submitted false, inaccurate or incomplete information, the Government may disqualify the Service Provider pursuant to Paragraph 24.1(b) above.
- 24.5 In providing the information required under Paragraphs 24.2 and 24.3 above, the Service Provider may show cause to satisfy the Government that the petition, proceedings, conviction record, infringement claim, breach or performance deficiency, or professional misconduct, as the case may be, does not cast doubt on the fitness, propriety or capability of the Service Provider to perform the Contract to be awarded in this Invitation to Quotation.
- 24.6 If the Service Provider is a company, the expression “related person” of the Service Provider includes any one of the following:
- (a) a shareholder (corporate or individual) which directly or indirectly beneficially owns fifty (50) percent or more of the issued share capital of the Service Provider (“majority shareholder”);
  - (b) a holding company or a subsidiary of the Service Provider;
  - (c) a holding company or a subsidiary of a majority shareholder of the Service Provider;
  - (d) a company in which a majority shareholder (being an individual) of the Service Provider directly or indirectly beneficially owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.

The expressions “holding company” and “subsidiary” have the meanings given to them in the Companies Ordinance (Chapter 622 of the Laws of Hong Kong).

24.7 If the Service Provider is a sole proprietor or partnership, the expression “related person” includes any one of the following:

- (a) any partner of the Service Provider (if it is a partnership);
- (b) the spouse, parent, child, brother or sister of the Service Provider, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent, and a step child to be a child of both the natural parent and of any step parent;
- (c) a company in which the Service Provider or any partner of the Service Provider beneficially directly or indirectly owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.

24.8 References to related persons, directors and management staff of the Service Provider or of a related person include persons who were in such capacity at such time of the incident referred to in Paragraphs 24.1(d), 24.1(e), 24.1(f), 24.1(g) or Paragraph 24.2(b).

## **25. Complaints about Process of Quotation Exercise or Contract Award**

The process of quotation exercise is subject to internal monitoring to ensure that the relevant contract is awarded properly and fairly. Any Service Provider who feels that its Quotation has not been fairly evaluated may write to the Head of the Procuring Department who will personally examine the complaint and refer it to the approving authority/relevant boards for consideration if the complaint relates to the system of quotation exercise or procedures followed. The Service Provider should lodge the complaint within three (3) months after the award of Contract.

## **26. Documents of Unsuccessful Quotations**

The Government may destroy all documents submitted by

unsuccessful Service Providers three (3) months after the Contract has been constituted under Paragraph 23.1.

## **27. Consent to Disclosure**

27.1 The Government may disclose, whenever it considers appropriate, to the public or upon request by any member of the public (which may have been a Service Provider) without any further reference to or consent from the successful Service Provider or any other Service Provider, particulars of the Services to be provided by the successful Service Provider, the date of the award, the name and address of the successful Service Provider and the contract amount.

27.2 Nothing in Clause 27.1 shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever (whether or not specified in Clause 27.1) if the disclosure is made under any one of the following circumstances:

- (a) the disclosure of any information to any public officer or public body, as defined in the Interpretation and General Clauses Ordinance (Chapter 1 of the Laws of Hong Kong) or any other person employed, used or engaged by the Government (including agents, advisers, contractors and consultants);
- (b) the disclosure of any information already known to the recipient;
- (c) the disclosure of any information which is public knowledge;
- (d) the disclosure of any information in circumstances where such disclosure is required pursuant to any law of Hong Kong, or an order of a court of Hong Kong or a court or tribunal with competent jurisdiction; or
- (e) without prejudice to the power of the Government under Clause 27.1, to the extent the information relates to a Service Provider, with the prior written consent of that Service Provider.

## **28. Environmental Protection**

- 28.1 Service Providers are requested to minimise the impact of their activities on the environment
- 28.2 The following environment-friendly measures are recommended to be adopted in the preparation of documents relating to a Quotation and the future performance of the Contract:
- (a) all documents should be printed on both sides and on recycled paper. Paper that exceeds 80 gsm should not be used for the text;
  - (b) use of plastic laminates, glossy covers or double covers should be avoided as far as possible. If art board paper has to be used as document covers, recyclable non-glossy paper should be used; and
  - (c) single line spacing should be used and excessive space in the margins and in between paragraphs should be avoided.

## **29. Supplementary Information/Quotation Addenda**

All supplementary information or addenda to the Quotation Document will be provided in writing by the Government and forwarded to all prospective Service Providers who have registered with the Government when obtaining a copy of the Quotation Document.

## **PART III CONDITIONS OF CONTRACT**

### **1. Total Services and Variation**

- 1.1 The Services to be performed by the Contractor under the Contract shall be as laid down in the Service Specification and shall be carried out by the Contractor, as and when required, to the satisfaction of the Government. The Contractor should also be bound by its Technical Proposal (subject to such modifications as may be agreed with the Government Representative) in the provision of the Services as part and parcel of the Contract.
- 1.2 The Contractor shall not extend the Services beyond the requirements specified in the Service Specification except as directed in writing by the Government Representative; but the Government Representative may, subject to the proviso hereinafter contained, at any time during the Contract Period by notice in writing direct the Contractor to alter, amend, omit, add to, or otherwise vary any of the Services and/or the Contract Period, and the Contractor shall carry out such variations, and be bound by the same conditions, so far as are applicable, as though the said variations were stated in the Service Specification.
- 1.3 Where a variation has been made to the Contract the amount to be added to or deducted from the Contract Price in accordance with that variation shall be determined in accordance with the rates specified in Annex B (Price Proposal) so far as the same may be applicable and where rates are not contained in Annex B (Price Proposal), or are not applicable, such amount shall be such sum as is reasonable in the circumstances.

### **2. Contractor's Acknowledgement, Obligations and Contract Performance**

- 2.1 The Contractor acknowledges and agrees that it has been supplied with sufficient information to enable it to provide to the Government the Services, which shall comply fully with the requirements set out in the Service Specification and other provisions of the Contract. The Contractor shall not be entitled to any additional payment nor be excused from any liability under the Contract as a consequence of any misinterpretation by the

Contractor of any matter or fact relating to the Service Specification or any other provisions of the Contract.

- 2.2 The Contractor further acknowledges that the Government relies on the skill and judgment of the Contractor in the provision of the Services and the performance of its obligations under the Contract.
- 2.3 The Contractor shall perform its obligations under the Contract:
  - (a) with appropriately experienced, qualified and trained personnel and with all due care, skill and diligence; and
  - (b) in accordance with Good Industry Practice.
- 2.4 The Contractor shall comply with all applicable laws and regulations in the provision of the Services.
- 2.5 The Contractor shall secure, obtain and maintain throughout the Contract Period all and any governmental authorizations, approvals, permits or licences which may be required or necessary in connection with the performance of the Contract and to bear all costs, charges and expenses that may be incurred in obtaining and maintaining the permits and licences.
- 2.6 The Contractor shall pay all taxes, duties, fees, charges, assessments of any nature levied by relevant governmental authorities and to pay the fines and penalties imposed for any offence or infringement by the Contractor under any laws or regulations in connection with the performance of the Contract.
- 2.7 The Contractor shall be responsible for the accuracy of all drawings, documents and information supplied by the Contractor to the Government in connection with the Services. Without prejudice to any other provisions of the Contract, the Contractor shall indemnify the Government against all losses and damages arising from, and costs and expenses incurred in connection with, any discrepancies, errors or omissions therein.

### **3. Warranties and Representations**

3.1 The Contractor warrants, represents and undertakes that:

- (a) the Contractor and its sub-contractors, their employees and agents shall have the necessary training, skill, experience, qualifications and expertise to provide the Services on the terms and conditions set out in the Contract;
- (b) the Contractor shall carry out the Services with all due diligence and in a timely, safe, proper, skillful and workmanlike manner;
- (c) the Services shall conform in all respects to the Service Specification and conditions under the Contract;
- (d) it shall not employ any illegal workers to carry out its obligations under the Contract;
- (e) the Contract constitutes valid, legally binding obligations of the Contractor enforceable in accordance with its terms;
- (f) all authorizations, approvals, consents, licences, exemptions and other requirements of any governmental, administrative or other authority or body in any relevant jurisdiction which are required to authorize the Contractor to execute, deliver and perform the Contractor's obligations under the Contract (including where its procedures so require, the consent of its parent company) have been duly and unconditionally obtained and are in full force and effect and the use of the Services by the Government will not contravene any applicable laws;
- (g) all information supplied, and statements and representations made by or on behalf of the Contractor in or in relation to its Quotation and the Contract are true, accurate and complete;
- (h) no claim is being made and no litigation, arbitration or administrative proceeding is presently in progress, or to the best of the Contractor's knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;

- (i) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (j) no proceedings or other steps have been taken and not discharged (nor to the best of its knowledge, are threatened) for the winding up or bankruptcy of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar office in relation to any of the Contractor's assets or revenue;
- (k) it owns, has obtained and is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract; and
- (l) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or on its ability to fulfil its obligations under the Contract.

3.2 The warranties, representations and undertakings, expressed or implied, contained in Clause 3.1 and other provisions of the Contract (collectively, "Warranties" and each, a "Warranty") shall be true without limitation in time, save that in case of any Warranty expressed to be effective during the Contract Period, it shall be true on each day of the Contract Period as if it is repeated on each such day.

3.3 Each of the Warranties shall be separate and independent and without prejudice to any other Warranty, and shall not be limited by reference to or inference from any other Warranty or any other provision of the Contract.

3.4 Unless otherwise expressly excluded from or provided to the contrary in the Contract, the rights, duties and liabilities imposed on a Service Provider and the rights conferred on the party contracting with the Service Provider under the Supply of Services (Implied Terms) Ordinance (Chapter 457 of the Laws of Hong Kong) apply to bind the Contractor and the Government respectively.

#### **4. Costs and Expenses**

Save as otherwise expressly provided for in the Contract, the Contractor shall comply with all provisions of the Contract and its obligations under the Contract at its own costs and expenses.

#### **5. Provision of Services**

5.1 Time shall be of the essence as regards the provision of the Services.

5.2 Notwithstanding any provision of the Contract, due provision of any Services to the Government shall not be regarded to have taken place unless and until such Services are accepted by the Government.

#### **6. Non-exclusive Contract**

Nothing in the Contract shall preclude the Government from procuring any Services from any other person.

#### **7. Payment of the Contract Price**

7.1 In consideration of the Contractor's due and proper performance of all its obligations in accordance with the Contract, the Government shall pay the Contractor the Contract Price.

7.2 Notwithstanding any provision in the Contract, unless otherwise agreed in writing by the Government, in respect of any Services provided to the Government, the Government shall not have any obligation to pay the Contractor any Contract Price for such Services unless and until the Services have been accepted by the Government.

7.3 The Contract Price is inclusive of all charges for provision of Services. Subject to Clause 1 and save as otherwise expressly provided for in the Contract, the Contractor shall not be entitled to any adjustment in the Contract Price for any reason.

- 7.4 The Contractor shall invoice the Government for any payment of the Contract Price. In respect of the provision of the Services, the Contractor shall deliver to the Government an invoice setting out the particulars of the Services provided, the amount of Contract Price payable for the Services and such other information as the Government Representative may require from time to time.
- 7.5 Notwithstanding any provision of the Contract, the Government is entitled to withhold payment of all or any part of the Contract Price and any other sum payable by the Government to the Contractor under the Contract if:
- (a) the Contractor fails to observe or perform any provision of the Contract;
  - (b) the Government disputes on any reasonable ground its obligation to pay the amount in question;
  - (c) the Government has reasonable grounds to believe that the Contractor is or will be liable to the Government under any provision of the Contract for the loss or damage suffered by the Government; or
  - (d) withholding of payment is required by any applicable law.
- 7.6 No payment made by the Government under the Contract shall prejudice or carry any implication whatsoever on any rights or cause of action which has accrued or may accrue, or any remedy available, to the Government in respect of any breach of the Contract by the Contractor.

## **8. Variations**

Subject to the provisions of the Contract, no waiver, cancellation, alteration or amendment of or to the provisions of the Contract shall be valid unless made by an instrument in writing and duly signed by the Contractor and the Government.

## **9. Liability and Indemnities**

- 9.1 Neither the Government nor any of its employees or agents shall be under any liability whatsoever for or in respect of:

- (a) any loss of or damage to any of the Contractor's property or that of its employees or agents however caused (whether by any Negligence of the Government or any of its employees or agents or otherwise); or
- (b) any injury to or death of the Contractor (in the case where the Contractor is a natural person) or any of its employees or agents, save and except any such injury or death caused by the Negligence of the Government or any of its employees or agents.

9.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify each of the Government and its employees and agents (each an "Indemnified Person") against:

- (a) any and all claims (whether or not successful, compromised, settled, withdrawn or discontinued, in whole or in part), actions, investigations, demands, proceedings or judgments, joint or several, threatened, brought or established against an Indemnified Person ("Claims"); and
- (b) any and all liabilities, losses, damages, costs, charges or expenses (including (i) all legal fees and other awards, costs, payments, charges and expenses and (ii) any loss or damage sustained by or any injury to or death of any person in consequence of any Negligence of the Contractor or any of its employees, sub-contractors or agents) which an Indemnified Person may pay or incur as a result of or in relation to any Claims, which in any case arise directly or indirectly in connection with, out of or in relation to:
  - (i) the performance or breach of any provisions of the Contract by the Contractor, its employees, agents or sub-contractors;
  - (ii) the negligence, recklessness, tortious acts or wilful omission of the Contractor, its employees, agents or sub-contractors;
  - (iii) any default, unauthorized act or wilful misconduct of the Contractor, its employees, agents or sub-contractor(s);

- (iv) any claim that the use or possession of the Materials infringes any Intellectual Property Rights of any person; or
- (v) the non-compliance by the Contractor, its employees, agents or sub-contractor(s) with any applicable law, or regulation, order or requirement of any government agency or authority.

- 9.3 The indemnity under Clause 9.2 shall not apply to any injury or death caused by the Negligence of an Indemnified Person.
- 9.4 In the event of any person suffering any injury or death in the course of or arising out of the Contract and whether there be a claim for compensation or not, the Contractor shall verbally inform the Government Representative as early as practicable and deliver to the Government a written report within seven (7) working days after the occurrence of the injury or death, or on an earlier date specified by the Government Representative.
- 9.5 For the purposes of this Clause, “Negligence” shall have the same meaning as that assigned to it in section 2(1) of the Control of Exemption Clauses Ordinance (Chapter 71 of the Laws of Hong Kong).
- 9.6 The indemnities, payment and compensation given in pursuance of the Contract by the Contractor shall not be affected or reduced by reason of any failure or omission of the Government in enforcing any of the terms and conditions of the Contract.

## **10. Termination**

### **10.1 If:**

- (a) the Contractor commits a fundamental breach of any term of the Contract;
- (b) the Contractor is in breach of any other provision of the Contract which in the opinion of the Government is not capable of remedy;

- (c) the Contractor commits a breach of any other provision of the Contract which is capable of remedy and fails to remedy the same within seven (7) days of service of notice by the Government (or such longer period as specified in the notice) requiring such remedy;
- (d) the Contractor is in breach of any of its warranties and undertakings under the Contract;
- (e) the Contractor has made a material misrepresentation (including submission of false statement or inaccurate information) during the quotation process of the Contract;
- (f) the Contractor, any officer (including director), employee, agent or sub-contractor of the Contractor commits an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) or any law of a similar nature in relation to the Contract or any other contract made by the Contractor with the Government; or
- (g) the Government is given the right to terminate the Contract under any other provision of the Contract,

the Government may by written notice to the Contractor terminate the Contract immediately.

10.2 The Government may also by written notice to the Contractor terminate the Contract immediately upon the occurrence of any of the following events:

- (a) a proposal is made for a voluntary arrangement or any other composition, scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
- (b) if the Contractor is an incorporated body, a shareholders or members meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than voluntarily for the purpose of bona fide reconstruction or solvent amalgamation);
- (c) a petition is presented for the winding-up or bankruptcy of the Contractor, which is not dismissed within fourteen (14) days after the petition is presented;

- (d) the Contractor is or becomes insolvent, or any order is made for the Contractor's bankruptcy;
- (e) an administrator, administrative receiver, receiver or similar officer is appointed over the whole or any part of the Contractor's business or assets;
- (f) the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (g) the Government reasonably apprehends that any of the events mentioned above is about to occur; or
- (h) a Force Majeure Event occurs in such manner entitling the Government to terminate the Contract under Clause 18.7.

10.3 The Government may at any time suspend or terminate the Contract by giving the Contractor thirty (30) working days prior written notice.

10.4 On termination of the Contract for any reason, the Government is under no further obligation to the Contractor under the Contract without thereby releasing the Contractor from any of its liabilities under the Contract, or affecting any rights and powers conferred upon the Government by the Contract.

10.5 The expiry or termination of the Contract shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision of the Contract which is expressly or by implication intended to come into or continue in force on or after such expiry or termination.

10.6 If the Contract is terminated under Clause 10.1 and the Government makes other arrangements for the provision of any Services from any other source, the Government may recover from the Contractor: (a) any amount in excess of the Contract Price incurred by the Government in engaging another contractor to complete the uncompleted Services and all costs and expenses incurred in making the arrangements for the same including conducting quotation exercise for the uncompleted Services; and (b) any additional expenditure incurred by the Government in connection with a default by the Contractor referred to in Clause 10.1. If the

Contract is so terminated, until the Government has established the final cost of making other arrangements contemplated under this Clause, no further payments shall be payable by the Government to the Contractor for the Services provided by the Contractor prior to termination and in accordance with the Contract for which payment has yet to be made by the Government.

- 10.7 Save as otherwise expressly provided for in the Contract, no compensation whatsoever (including compensation for any loss or expense arising from any consequential loss or damage, or loss of opportunity, suffered or incurred by the Contractor) shall be payable by the Government to the Contractor as a result of any suspension or early termination of the Contract by the Government.

## **11. Confidentiality**

- 11.1 The Contractor shall treat as proprietary and confidential all information, documents, materials and data (including any personal particulars records and personal data (as defined in the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong)), in whatever form or media, which the Government has for the purposes of or in the course of performing the Contract, supplied, made available or communicated to the Contractor or which may come to the Contractor's knowledge or be accessible by the Contractor in the course of carrying out the Services and all advices, recommendations, documents, materials and data given by the Contractor to the Government under the Contract ("Confidential Information"). The Contractor's obligations under this Clause 11 shall not extend to any information which was rightfully in the possession of the Contractor prior to the commencement of the negotiations leading to the Contract or which is already in the public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause 11).
- 11.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify and keep the Government, its authorized users fully and effectively indemnified against any and all actions, damages, costs, claims, demands, expenses (including the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings and liabilities of any nature arising from or incurred by reason of:

- (a) a breach of confidence (whether under the Contract or general law) by the Contractor or any of its employees, agents or sub-contractors; and
  - (b) any actions or claims made in respect of information subject to the Personal Data (Privacy) Ordinance, which action and/or claim would not have arisen but for the act, negligence or omission of the Contractor or any of its employees, agents or sub-contractors in connection with the performance of the Contract.
- 11.3 The Contractor shall use the Confidential Information solely for the purposes of the Contract. The Contractor shall not, at any time whether during the Contract Period or after the expiry or termination (howsoever occasioned) of the Contract, use (or allow to be used) the Confidential Information for any other purposes without the Government's prior written consent.
- 11.4 The Contractor shall not disclose the Confidential Information to any third parties except in confidence to such of the Contractor's employees, agents or sub-contractors who need to know the same for the purposes of the Contract.
- 11.5 The Contractor undertakes to take all necessary measures for the protection of the Confidential Information and to prevent any unauthorized disclosure or leakage of the Confidential Information.
- 11.6 The Contractor shall comply with any disclosure restrictions and conditions of use of the Confidential Information as may be stipulated by the Government from time to time.
- 11.7 The Contractor shall ensure that each of its employees, agents, sub-contractors, and any other persons involved in the performance of the Contract are aware of and comply with the provisions of this Clause 11 and the Official Secrets Ordinance (Chapter 521 of the Laws of Hong Kong).
- 11.8 The Contractor further agrees that it will not at any time whether by itself or through any subsidiary or agent use, sell, license, sub-license, create, develop or deal with any Confidential Information otherwise than in accordance with the Contract.

- 11.9 If the Contractor becomes aware of any breach of confidence by any of its employees, agents or sub-contractors, it shall promptly notify the Government and give the Government all reasonable assistance in connection with any action or proceedings which the Government may take or institute against any such persons.
- 11.10 The Government may request the Contractor in writing at any time that any Confidential Information disclosed pursuant to the terms of this Clause 11 and any copies, analyses, compilations and extracts thereof whether in hard copies, electronic format or other media be returned, destroyed and/or deleted with a written statement to the effect that upon such return, destruction and/or deletion it has not retained in its possession or under its control, either directly or indirectly, any Confidential Information in whatever form. The Contractor shall comply with any such request from the Government within seven (7) days of receipt of such request.
- 11.11 The provisions of this Clause 11 shall survive the expiry or termination of the Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding such expiry or termination.

## **12. Probity**

- 12.1 The Contractor acknowledges it has been reminded that:
- (a) dishonesty, theft and corruption on its part or that of its employees, agents or sub-contractors are criminal offences and may lead to prosecution under section 9 of the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong), sections 17, 18D and 19 of the Theft Ordinance (Chapter 210 of the Laws of Hong Kong) and section 161 of the Crimes Ordinance (Chapter 200 of the Laws of Hong Kong); and
  - (b) the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance is not permitted.
- 12.2 The Contractor shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors that the soliciting or accepting of advantages (as defined in the Prevention of Bribery Ordinance) is not permitted. The Contractor shall also caution its officers, employees and agents and sub-contractors

against soliciting or accepting any excessive hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors.

- 12.3 The Government may terminate the Contract immediately if the Contractor or any of its employees, agents and sub-contractors is convicted of an offence under the Prevention of Bribery Ordinance, the Theft Ordinance or the Crimes Ordinance.

### **13. Insurance**

- 13.1 The Contractor shall effect and maintain throughout the Contract Period a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor in connection with the performance or attempted performance of its obligations under the Contract, including death, personal injury, loss of or damage to property or any other loss. Such insurances shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. The insurance company or companies shall be authorized under the Insurance Companies Ordinance (Chapter 41 of the Laws of Hong Kong).
- 13.2 Without prejudice to Clause 13.1, the Contractor shall effect and maintain employer's liability insurance in respect of all its employees and other staff in accordance with all applicable legal requirements.
- 13.3 If required by the Government, the Contractor shall deliver to the Government copies of all insurance policies referred to in the Contract together with receipts or other evidence of payment of the latest premium due under the policies.
- 13.4 The Contractor shall be responsible for lodging claims with the insurance company and shall notify the insurance company within the time period specified in the policy of the occurrence of any event liable to give rise to a claim.
- 13.5 If the Contractor fails to give effect to or maintain any insurance required under the Contract, the Government may make such alternative arrangements as it considers appropriate to protect its interests and may recover from the Contractor the costs of putting such in place and maintaining such arrangements.

- 13.6 No provision in any insurance and no amount of insurance covered shall relieve the Contractor of any liability under the Contract. It is the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability under the Contract.

#### **14. Relationship of the Parties**

The Contractor enters into the Contract with the Government as an independent contractor only and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership, or a joint venture between the Government and the Contractor. Unless otherwise expressly provided for in the Contract, neither party is authorized to act in the name of, or on behalf of, or otherwise bind the other party.

#### **15. Assignment and Sub-contracting**

- 15.1 Unless otherwise provided for in the Contract, the Contractor shall not, without the prior written consent of the Government, assign, transfer, sub-contract or otherwise dispose of any of its interests, rights, benefits or obligations under the Contract. The performance of the Contract by the Contractor shall be personal to it.
- 15.2 The Contractor shall submit the proposed sub-contract to the Government for approval. The Government reserves the right to grant permission for sub-contracting and determine the terms and conditions of the sub-contract. A certified copy of the sub-contract shall be deposited with the Government within seven (7) days after the effective date of the sub-contract.
- 15.3 The Contractor shall remain fully liable and shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any part of the Contract and the Contractor shall be responsible for the acts, defaults or neglect of any sub-contractor, its employees and agents.

#### **16. Disclosure of Information**

The Contractor hereby irrevocably authorizes, consents and agrees that the Government may, whenever it considers appropriate or upon request by any person (written or otherwise) and without any further reference to the Contractor, disclose to any person in such form and manner as the Government considers fit:

- (a) the Services provided or to be provided by the Contractor;
- (b) the contract amount and any other fees, cost and expense payable to the Contractor pursuant to the Contract;
- (c) the price proposal submitted prior to the date of the Contract by the Contractor to the Government in relation to the Services; and
- (d) the engagement by the Government of the Contractor under the Contract and the name and address of the Contractor and persons appointed or engaged by the Contractor to assist in the performance of the Contract.

## **17. Vicarious Liability**

Any act, default, neglect or omission of any officers, employees, agents or sub-contractors of the Contractor shall be deemed to be the act, default, neglect or omission of the Contractor.

## **18. Force Majeure**

- 18.1 If the Contractor becomes aware of any matter likely to constitute a Force Majeure Event, the Contractor shall forthwith notify the Government in writing of that matter and all relevant particulars.
- 18.2 Within three (3) days after the occurrence of a Force Majeure Event, the Contractor shall notify the Government in writing of the full particulars of the Force Majeure Event including its nature, extent and likely duration of its effect on the Contractor's ability to perform its obligation under the Contract. In the event of an occurrence of a Force Majeure Event, the Government may on its own issue a notice to the Contractor noting the occurrence of the Force Majeure Event and requiring the Contractor to suspend all or any of the obligations under the Contract. A notice issued by the Contractor or the Government pursuant to this Clause is hereinafter referred to as the "Suspension Notice".
- 18.3 Following the issue of a Suspension Notice by the Contractor or the Government, the Contractor shall keep the Government informed at reasonable intervals, and upon the request of the Government, of:

- (a) the likely duration of the relevant Force Majeure Event and of its effect on the Contractor's ability to perform its obligations under the Contract;
- (b) the actions taken or proposed to be taken by the Contractor to mitigate or minimize the effects of that Force Majeure Event; and
- (c) any other matters relevant to that Force Majeure Event or the Contractor's performance affected by that Force Majeure Event.

18.4 To the extent that the performance of obligations by the Contractor under the Contract is prevented by a Force Majeure Event, the Contractor's performance of such obligations will, subject to Clause 18.5, be suspended to that extent from the date the Contractor or the Government gives a Suspension Notice in respect of that Force Majeure Event until the Contractor ceases to be so prevented ("Cessation Date"). Notwithstanding anything in the Contract to the contrary, as soon as the Government issues a Suspension Notice to the Contractor, the Contractor shall forthwith suspend the performance of the obligations to the extent specified in the Suspension Notice.

18.5 During the suspension of any obligations under Clause 18.4:

- (a) the Contractor shall use its best endeavours (including incurring any reasonable expenses and re-deploying its manpower and resources) to remove or mitigate the effect of each Force Majeure Event on the Contractor's performance of the obligations under the Contract;
- (b) the Government may make alternative arrangements for the performance of any suspended obligations, whether by another person or otherwise; and
- (c) the Contractor shall not be entitled to any cost, fee or charge or such pro rata portion thereof in respect of the suspended obligations for the suspended period.

18.6 As soon as the relevant Force Majeure Event has ended, the Contractor shall forthwith notify the Government of the Cessation

Date, or the Government may on its own, after consultation with the Contractor, by notice in writing to the Contractor, determine the appropriate Cessation Date. The Contractor shall immediately after the Cessation Date resume performance of the suspended obligations in accordance with the terms and conditions of the Contract. In the event of any disagreement between the Government and the Contractor on the appropriate Cessation Date, the Government's decision shall be final in the absence of manifest error.

18.7 Should suspension of the performance by the Contractor of its obligations under the Contract persist or be likely to persist as a result of a Force Majeure Event, the Government shall be entitled to terminate the Contract pursuant to Clause 10.2.

18.8 The Contractor shall ensure that provisions similar to this Clause 18 are incorporated in all its contracts with sub-contractors made pursuant to this Contract.

## **19. Retention of Records**

The Contractor shall keep and maintain until six (6) years after the expiry of the Contract, or such longer period as may be agreed by the parties, full and accurate records of the Contract including the Services provided under it, all expenditure reimbursed by the Government, and all payments made by the Government. If requested by the Government, the Contractor shall afford the Government or its representative access to the records as may be requested by the Government.

## **20. Notices**

20.1 Each notice, demand, invoice, correspondence or other communication given or made under the Contract by a party shall be in writing and delivered or sent to the other party at its postal address, facsimile number or email address set out in Annex D (Information on the Service Provider) (or such other postal address, facsimile number or email address as the addressee has by not less than seven (7) working days' prior written notice specified to the other party).

20.2 Such notices, demands, invoices, correspondence or other communications shall be addressed as provided in Clause 20.1 and, if so addressed, shall be deemed to have been duly given or made as follows:

- (a) if sent by personal delivery during normal business hours on a working day, upon delivery at the address of the relevant party;
- (b) if sent by post, four (4) days (for any place in Hong Kong) and seven (7) days (for any place outside Hong Kong) after the date of posting;
- (c) if sent by facsimile during normal business hours on a working day, when dispatched with confirmed receipt as evidenced by the transmission report generated at the end of the transmission of such facsimile by the facsimile machine used for such transmission;
- (d) if sent by email, when actually received in a form readable by an individual.

## **21. Entire Agreement**

21.1 The Contract constitutes the whole agreement between the parties thereto and supersedes any previous agreements or arrangements between them relating to the subject matter hereof. The Contractor acknowledges that in entering into the Contract, it has not relied on any statements, warranties or representations given or made by the Government.

21.2 All of the provisions of the Contract shall remain in full force and effect notwithstanding the completion of the Services (except insofar as those obligations which have been fully performed).

## **22. Governing Law**

The Contract shall be governed by and construed in accordance with the laws of Hong Kong and the parties hereby agree to submit to the exclusive jurisdiction of the courts of Hong Kong in relation to any matters arising out of the Contract.

## **23. Severability**

If any provision of the Contract is found by any authority or court of competent jurisdiction to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the other provisions of the Contract, all of which shall remain in full force and effect.

## **24. Waiver**

24.1 No failure, delay, forbearance or indulgence by any party to the Contract to exercise any right, power or remedy available to it under the Contract or at law or in equity shall operate as a waiver thereof; nor shall any single or partial exercise of the same preclude any other or further exercise thereof or the exercise of any other right, power or remedy. A right or a remedy of each party under the Contract shall be cumulative and not exclusive of any other rights, power or remedies provided by the Contract, at law or in equity. Without limiting the foregoing, no waiver by any party of any breach by the other party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.

24.2 Without prejudice to the generality of Clause 24.1, any right of termination of the Contract or any other right, power or remedy of whatsoever nature conferred upon the Government under the Contract shall be exercisable by it in addition to and without prejudice to any other rights and remedies available to it under the Contract or at law (and, without prejudice to the generality of the foregoing, shall not extinguish any right to damages to which the Government may be entitled in respect of the breach of the Contract) and no exercise or failure to exercise a right of termination shall constitute a waiver by the Government of any other right, power or remedy.

## **25. Recovery of Sums Due**

Where the Contractor has incurred any liability to the Government, whether at law or in equity and whether such liability is liquidated or unliquidated, the Government may set off, whether by way of equitable set off or at common law the amount of such liquidated liability and a reasonable estimate of the amount of any unliquidated

liability, against any sum then due or which at any time thereafter may become due from the Government to the Contractor under the Contract or any other contract made between the Government and the Contractor.

## **26. Assistance in Legal Proceedings**

26.1 If and whenever requested to do so by the Government Representative, the Contractor shall provide to the Government all relevant information, documents (including documentation and statements from staff) and other assistance in connection with any inquiry, investigation, arbitration, tribunal hearings or court proceedings in which the Government may become involved or any internal disciplinary hearing of the Government that arises out of or in connection with the Contract or the Contractor's presence at the Government's premises. If requested by the Government, the Contractor shall arrange for relevant staff to give evidence at such inquiries, investigations, arbitrations, hearings or proceedings.

26.2 Where the Contractor or any employees, agents or contractors of the Contractor become aware of an incident, accident or other matter which may give rise to a claim or legal proceedings by a third party against the Government or the Contractor or in respect of the Contract, it shall notify the Government Representative immediately in writing giving full details of such incident, accident or matter as the Government Representative may require.

## **27. Contracts (Rights of Third Parties) Ordinance**

The parties hereby declare that nothing in the Contract confers or purports to confer on any third party any benefit or any right to enforce any term of the Contract pursuant to the Contracts (Rights of Third Parties) Ordinance (Chapter 623) of the laws of Hong Kong.

## **28. Order of Precedence**

In the event of, and only to the extent of, any conflict or inconsistency between the Clauses of the Contract, any document referred to in those

Clauses and the Schedules, the following order of precedence shall be applied, but only in so far as is necessary to resolve that conflict or inconsistency:

- (a) Service Specification;
- (b) Conditions of Contract; and
- (c) any other materials which were submitted by the Contractor as part of its Quotation and attached to the Contract.

## **PART IV SERVICE SPECIFICATION**

### **PROVISION OF SERVICES: STRATEGIC ADVICE ON EXTERNAL COMMUNICATION**

#### **Background**

Protests in Hong Kong have attracted widespread international attention over the past two months. The HKSAR's image has been affected locally and abroad. Governance in Hong Kong, and the implementation of "one country, two systems" has come under the spotlight. This has also raised concerns about Hong Kong's positioning as a global business and financial hub with a stable environment underpinned by the rule of law. A more acute concern is the affect the protests may have on perceptions about personal safety for business travellers, trade shows/exhibitions and tourists. Protesters have signalled an ongoing campaign, with plans changing often in response to new developments.

#### **Objectives**

The objectives of the strategic advice are to:

- address negative perceptions in key markets overseas to maintain confidence in Hong Kong
- underscore the strengths and attributes that differentiate Hong Kong from other cities in the region and bring out the success of "one country, two systems"

#### **Target Audiences**

People living outside Hong Kong aged 25-45, business persons, investors, entrepreneurs, professionals, opinion leaders, think tanks, government officials, politicians, high-income leisure and business travelers

#### **Scope of Services**

The Service Provider shall provide:

- Assessment of Hong Kong's image overseas following the “extradition bill” and subsequent protests/conflicts
- Strategy to achieve the two objectives listed above
- Key message(s), tailored for specific audiences if necessary
- PR and publicity plan to implement the strategy, including, but not limited to possible platforms, media mix, timing and duration
- Advice on budget ballpark estimates to implement such plan

## **Key Markets**

The key external markets for Hong Kong are APAC, North America, Europe

APAC – Japan, Korea, Singapore and Australia

North America – US cities of San Francisco/Bay Area, Los Angeles, Seattle, New York, Boston and Washington D.C. Canadian cities of Toronto and Vancouver (including the expatriate - Hong Kong communities)

Europe – The UK, France, Germany, the Netherlands, Belgium (Brussels), and the Nordics

## **Date of Service Delivery**

Subject to final confirmation of the working schedule, the date of service delivery is expected to be in the fourth quarter of 2019.

## **Working Schedule**

The Contract shall commence on a date in the third or fourth quarter of 2019, or another date, to be confirmed by the Government's Representative. The tentative work schedule, subject to changes along the latest development, includes but is not limited to the following key activities.

<b>Timetable</b>	<b>Tasks</b>
August 12, 2019	Issue quotation invitation to Service Providers
August 15, 2019	Submission of Reply Slip by Service Providers
August 20, 2019	Briefing to interested Service Providers by ISD
August 27, 2019	Deadline for submission of quotation by Service Providers
Early Sept, 2019	Presentation of proposals to selection panel as

	well as to the concerned parties by Service Providers
Mid Sept, 2019	Award of contract to the successful Service Provider
3 <sup>rd</sup> or 4 <sup>th</sup> quarter 2019	Presentation of detailed proposal to ISD
4 <sup>th</sup> quarter 2019	Delivery of service

## **PART V OFFER TO BE BOUND**

### **PROVISION OF SERVICES: STRATEGIC ADVICE ON EXTERNAL COMMUNICATION**

I/We, [name of Service Provider] , (the “Service Provider”) having read the Interpretation, Terms of Quotation, Conditions of Contract and Service Specification set out in Parts I-IV hereof and those Annexes attached (the “Quotation Document” Ref.: [ ISD/OPRS/21/19], agree: -

1. to be bound by the terms and conditions as stipulated; and
2. to carry out the whole of the Services under the Quotation Document and the Contract during the Contract Period or any extension thereto at the prices offered by us in the price proposal free of all other charges, costs and expenses, subject to and in accordance with the Quotation Document and the Contract.

Signature:

Service Provider OR Director/Partner of Service Provider

Name of Signatory

Date:

#### **Important Note:**

- (i) **This Offer to be Bound must be duly signed by:**
  - (a) **if the Service Provider is a sole proprietorship, the Service Provider;**
  - (b) **if the Service Provider is a partnership, a partner of the Service Provider;**  
**or**
  - (c) **if the Service Provider is a body corporate, one or more persons who are duly authorized by the Service Provider to sign and submit the Quotation for and on behalf of the Service Provider.**
- (ii) **Strike out clearly alternatives which are not applicable.**

**PROVISION OF SERVICES:  
STRATEGIC ADVICE ON EXTERNAL COMMUNICATION**

**Technical Proposal**

The Technical Proposal shall include without limitation the following information:

- A. An initial assessment of Hong Kong's image overseas following the "extradition bill" and subsequent protests/conflicts; and a plan on how the detailed assessment will be carried out
- B. Proposed PR strategy to achieve the objectives
- C. Key message(s), tailored for specific audiences if necessary
- D. Publicity plan to implement the strategy, including, but not limited to possible platforms, media mix, timing and duration; and the budget ballpark estimates to implement such plan
- E. A plan on how the effectiveness of the publicity plan will be assessed after launch until a date to be decided, or the latest, March 31, 2020
- F. Details, including but not limited to, name and address, telephone number and facsimile number, as well as present business of proposed sub-contractor, if applicable

Three (3) sets of the Technical Proposal should be submitted.

**Please make reference to PART IV (Service Specification) when preparing the Technical Proposal.**

**Please DO NOT include any price information in the Technical Proposal.**

**PROVISION OF SERVICES:  
STRATEGIC ADVICE ON EXTERNAL COMMUNICATION**

**Price Proposal**

(You may use separate sheets to provide the supplementary information when necessary)

<b>Items</b>	<b>Description</b>	<b>Cost (HK\$*/US\$*)</b>
1.	Advisory Fees	
2.	Fees for provision of weekly assessment report on the effectiveness of publicity plan	
	<b>Total Service Fee: (i.e. Total Cost of Items 1 and 2):</b>	

<b>Optional items</b>	<b>Description</b>	<b>Cost (HK\$*/US\$*)</b>
1.		
2.		
3.		

Remark: \*Please specify the currency quoted. If a Service Provider does not specify the currency of the prices quoted, it shall be deemed that the quoted prices are in Hong Kong dollars.

**Notes**

1. Only the Total Service Fee will be taken into account for assessment of the Price Proposal.
2. Unless specified otherwise, the Total Service Fee should include all the expenses pertaining to the performance of the duties as stated in Part IV (Service Specification). NO reimbursement of any out-of pocket expenses would be entertained.

Three (3) sets of the Price Proposal should be submitted.

**Please make reference to PART IV (Service Specification) when preparing the Price Proposal.**

**Name of Company:**\_\_\_\_\_

**PROVISION OF SERVICES:  
STRATEGIC ADVICE ON EXTERNAL COMMUNICATION**

**Quotation Evaluation Procedures, Criteria and Marking Scheme**

A two-envelope approach with a technical to price weighting of 70:30 will be adopted for quotation evaluation whereby price assessment will be conducted only after technical assessment. All quotations will be evaluated in five (5) stages as set out below.

**STAGE I – COMPLETENESS CHECK**

2. A completeness check will be conducted to confirm if a quotation has been submitted in accordance with the procedural requirements stipulated in the Quotation Document. If a Service Provider fails to submit any of the information/documents stipulated in paragraph 2.13(a) of the Terms of Quotation before the Quotation Closing Time, its quotation will not be considered further.

**STAGE II – COMPLIANCE WITH ESSENTIAL REQUIREMENTS**

3. Quotations which passed Stage I will be checked for its compliance with the essential requirements as detailed in the Quotation Document. Any Quotation failing to meet any of the essential requirements will not be considered further.

**STAGE III – TECHNICAL ASSESSMENT**

4. The quotations which passed both Stage I and Stage II will be further considered in Stage III. An Assessment Panel will be formed to evaluate the quotations according to the criteria as set out in the following table.

<u>Assessment Criteria</u>	<u>Maximum Mark</u>	<u>Passing Mark</u>
(A) Image Assessment (see <i>Note 1</i> )	20	18.75
(B) PR Suggestions (see <i>Note 2</i> )	55	
(C) Innovative Suggestions (see <i>Note 3</i> )	20	N/A
<b>(D) Experience in Government sectors (see Note 4)</b>	<b>5</b>	<b>N/A</b>
<b>Total Technical Mark</b>	<b>100</b>	<b>N/A</b>

5. There is no passing mark for the total marks scored in the Technical Assessment. An overall passing mark of 18.75 is set for Assessment Criteria (A) to (B), which is 25% of 75 marks, the total maximum mark excluding the marks reserved for innovative suggestions and experience in Government sectors. Quotations that fail to attain the passing mark of 18.75 for Assessment Criteria (A) to (B) will not be considered further.

6. The submission for the Technical Proposal, excluding related annexes and documentary proof, shall not be more than 40 pages in A4 size paper for text (with margin not less than 25 mm and character font size not less than 12). For the avoidance of doubt, pages exceeding the specified

limit will be considered in the quotation evaluation but 0.5 mark will be deducted from the Total Technical Marks for each excessive page, subject to a maximum of 8 marks.

7. A quotation which has passed Stage III assessment shall be considered as a conforming quotation. A maximum **Weighted Technical Score** of 70 will be allocated to the conforming quotation with the highest Total Technical Mark, while the Weighted Technical Score for other conforming quotations will be calculated by the following formula:

$$\text{Weighted Technical Score} = \frac{\text{Total Technical Mark attained by the quotation being assessed}}{\text{Highest Total Technical Mark attained among the conforming quotations}} \times 70$$

### ***Explanatory Notes for Stage III***

#### **Note 1: Assessment Criterion (A)**

Assessment Criterion (A) – Image Assessment refers to the Service Provider’s assessment of Hong Kong’s image overseas following the “extradition bill” and subsequent protests/conflicts. Marks will be given according to the following five-grade approach:

<u>Grade</u>	<u>Percentage of Maximum Marks</u>
Very Good	100%
Good	75%
Satisfactory	50%
Fair	25%
Poor	0%

For Assessment Criterion (A), the guidelines for assessment of grade are as follows:

A “**Very Good**” grade will be given if the Service Provider’s assessment is highly comprehensive and insightful.

A “**Good**” grade will be given if the Service Provider’s assessment is comprehensive and insightful.

A “**Satisfactory**” grade will be given if the Service Provider’s assessment is generally comprehensive and insightful.

A “**Fair**” grade will be given if the Service Provider’s assessment is generally comprehensive.

A “**Poor**” grade will be given if the Service Provider’s assessment is incomprehensive.

#### **Note 2: Assessment Criterion (B)**

Assessment Criterion (B) – PR Suggestions shall cover the following items:

- (a) PR strategy to achieve the objectives;
- (b) key message(s), tailored for specific audiences if necessary;
- (c) publicity plan to implement the strategy, including, but not limited to possible platforms, media

mix, timing and duration; and

(d) advice on budget ballpark estimates to implement such plan.

Marks will be given according to the following five-grade approach:

<u>Grade</u>	<u>Percentage of Maximum Marks</u>
Very Good	100%
Good	75%
Satisfactory	50%
Fair	25%
Poor	0%

A **“Very Good”** grade will be given if the Service Provider’s suggestions are highly effective and practicable; and the information and ideas are presented in a clear, accurate and convincing manner.

A **“Good”** grade will be given if the Service Provider’s suggestions are effective and practicable; and the information and ideas are presented in a clear, accurate and convincing manner.

A **“Satisfactory”** grade will be given if the Service Provider’s suggestions are generally effective and practicable; and the information and ideas are presented in a clear and accurate manner.

A **“Fair”** grade will be given if the Service Provider’s suggestions are generally practicable; and the information and ideas are presented in a clear manner.

A **“Poor”** grade will be given if the Service Provider’s suggestions are impracticable; or and the information and ideas are poorly presented.

### ***Note 3: Innovative Suggestions***

Service Providers are encouraged to make innovative suggestions. A maximum of 20 marks will be given to two types of innovative suggestions:

(a) Type I - innovative suggestions which are considered effective and practicable in improving the delivery of Services. Service Providers may propose innovative suggestions, which may not necessarily be technology-related, bringing benefits in terms of the following:

- Better quality of the Services
- Saving of manpower resources for delivering the Services
- Increased utilisation of the Services
- Any other benefits that can facilitate the work of ISD

Innovative suggestions will be assessed in comparison to how the Services are previously delivered under the existing contract or the conventional mode of service delivery adopted by the Government.

(b) Type II - innovative suggestions which may not be directly relevant to the Services, but which can bring about positive values or benefits to the Government or public at large. Such positive values or benefits may include, *inter alia*, the following:

- Application/adoption of new technology/inventions or innovative application of existing/matured technology
- Contribution to sustainable development of the publicity and public relations industry
- Fostering a caring society (e.g. the employment of persons with disabilities)
- Environmental protection

Service Providers should submit a written proposal setting out innovative suggestions and explaining clearly what benefits or positive values their proposed innovative suggestions can bring about.

Services Providers should highlight in their technical proposals the innovative suggestions and explain clearly what benefits/positive values their proposed innovative suggestions can bring about in their submissions to facilitate quotation evaluation. They may also be requested to provide supporting documents or a demonstration to prove the practicability of their innovative suggestions. All proposed innovative suggestions will be assessed on the basis of the information provided in the quotation submissions and the factual supporting documents provided by the Service Provider upon request by the Government. The demonstration will not be taken into account in marking. It only serves as a means to enable members of the Assessment Panel to have a better understanding of the innovative suggestions proposed by the Service Provider.

Marks will be given to innovative suggestions in accordance with the following rule:

Number of practicable innovative suggestions contained in the written proposal (including both Type I and Type II innovative suggestions)	Percentage of Maximum Mark
0 practicable innovative suggestions	0%
1 to 2 practicable innovative suggestions	33%
3 to 4 practicable innovative suggestions	66%
5 or more practicable innovative suggestions	100%

All practicable innovative suggestions included in the technical proposal submitted by the successful Service Provider and accepted by the Government shall also form part of the Contract.

#### **Note 4 : Experience in Government sectors**

<u>Grade</u>	<u>Percentage of Maximum Marks</u>
Very Good	100%
Good	75%
Satisfactory	50%
Fair	25%
Poor	0%

For Assessment criteria, the guidelines for assessment of grade are as follows :

A “**Very Good**” grade will be given if the Service Provider has 5 years’ or more experience in Government sectors during the past 15 years immediately before the Original Quotation Closing Date

A “**Good**” grade will be given if the Service Provider has 4 years’ experience in Government

sectors during the past 15 years immediately before the Original Quotation Closing Date

A “**Satisfactory**” grade will be given if the Service Provider has 3 years’ experience in Government sectors during the past 15 years immediately before the Original Quotation Closing Date

A “**Fair**” grade will be given if the Service Provider has less than 3 years’ experience in Government sectors during the past 15 years immediately before the Original Quotation Closing Date

A “**Poor**” grade will be given if the Service Provider has no experience in Government sectors during the past 15 years immediately before the Original Quotation Closing Date

#### **STAGE IV – PRICE ASSESSMENT**

8. The price proposals of those conforming quotations which completed Stages I, II and III will be further evaluated. A maximum **Weighted Price Score** of 30 will be allocated to the conforming quotation with the lowest Total Service Fee, while the Weighted Price Score for other conforming quotations will be calculated by the following formula:

$$\text{Weighted Price Score} = \frac{\text{The lowest Total Service Fee among the quotations being assessed in STAGE IV – PRICE ASSESSMENT}}{\text{Total Service Fee of the Quotation being assessed}} \times 30$$

#### **STAGE V – CALCULATION OF COMBINED SCORE**

9. The **Combined Score** of a conforming Quotation will be calculated in accordance with the following formula:

$$\text{Combined Score} = \text{Weighted Technical Score} + \text{Weighted Price Score}$$

10. Normally, the quotation with the highest Combined Score will be recommended for acceptance, subject to the requirement that the Government is satisfied that the recommended Service Provider is fully (including technically, commercially and financially) capable of undertaking the contract, and that the recommended quotation is the most advantageous quotation to the Government in accordance with the quotation provisions.

**PROVISION OF SERVICES:  
STRATEGIC ADVICE ON EXTERNAL COMMUNICATION**

**Information on the Service Provider**

(To be completed and returned together with the Quotation)

**Part A – Company/Business Organization Status**

A Service Provider shall provide the following details:

- (a) Name and address of the company/business organization:

\_\_\_\_\_

- (b) Telephone Number and Facsimile Number of the company/business organization:

\_\_\_\_\_

- (c) Present business:

\_\_\_\_\_

- (d) Particulars of company (e.g. year of establishment, ownership, number of workers employed etc.):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (e) Experience in rendering similar services in related field(s) (with name(s) of company/government department, locations and dates etc.):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Name of Company:**\_\_\_\_\_

**PROVISION OF SERVICES:  
STRATEGIC ADVICE ON EXTERNAL COMMUNICATION**

**Information Schedule**

(To be completed and returned together with the quotation submission)

**1. Information required under Paragraph 24.2 (Government Discretion) of the Terms of Quotation**

\* **(a)** I / We confirm that none of the events as mentioned in Paragraphs 24.2(a) to 24.2(d) of the Terms of Quotation has ever occurred.

\* **(b)** I / We confirm that the following event(s) as mentioned in Paragraphs 24.2(a) to 24.2(d) of the Terms of Quotation has occurred:

<b>Date</b>	<b>Details of the Event</b>

Note: \* Please delete whichever is not applicable.

Remark: If a Service Provider does not complete this part, it shall be deemed that the Service Provider confirms that none of the events as mentioned in Paragraphs 24.2(a) to 24.2(d) of the Terms of Quotation has ever occurred.

**Name of Company:**\_\_\_\_\_

## Annex F

To: Information Services Department

Fax: (852) 2521 7725

### **Registration Form for Attending Quotation Briefing**

#### **PROVISION OF SERVICES: STRATEGIC ADVICE ON EXTERNAL COMMUNICATION**

(Quotation Ref.: ISD/OPRS/22/19)

#### **Details of the Briefing Session**

Date	:	August 20, 2019
Time	:	pm
Venue	:	To be confirmed

#### **Details of Registration:**

The following person(s) from our company will attend the briefing session: -

	<b>Name</b>	<b>Post Title</b>
(1)	_____	_____
(2)	_____	_____
(3)	_____	_____
Signature :	_____	Name : _____
Post title :	_____	Company : _____
Phone no.:	_____	Fax no. : _____
E-mail address :	_____	Date : _____

#### **NOTE**

**This form should be completed and returned by fax to the Information Services Department by 12noon, August 15, 2019.**